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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Planalytics, Inc.

Serial No. 76321755

Timothy D. Pecsénye of Blank Rome LLP for Planalytics, Inc.

Monique C. Miller, Trademark Examining Attorney, Law Office
108 (David Shallant, Managing Attorney).

Before Seeherman, Quinn and Drost, Administrative Trademark
Judges.

Opinion by Drost, Administrative Trademark Judge:

On October 5, 2001, Planalytics, Inc. (applicant)
applied to register the mark CORNBUYER in typed form on the
Principal Register for services ultimately identified as
"providing on-line risk management services in the field of

pricing and purchasing decisions for corn" in International Class 36.¹

The examining attorney refused registration on the ground that the mark was merely descriptive under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1), because the mark CORNBUYER "describes the intended user of the services." Brief at 4. The examining attorney also refused to register the mark because applicant did not comply with the examining attorney's requirement for information under 37 CFR § 2.61(b). Applicant maintains that its mark is "a complete fabrication of the English language" and a coined term that is suggestive of the services. Applicant's Brief at 10.

After the examining attorney made the refusals final, applicant appealed to this board.

We affirm on both grounds.

For a mark to be merely descriptive, it must immediately convey knowledge of the ingredients, qualities, or characteristics of the goods or services. In re Gyulay, 820 F.2d 1216, 3 USPQ2d 1009, 1009 (Fed. Cir. 1987); In re Quik-Print Copy Shops, Inc., 616 F.2d 523, 205 USPQ 505, 507 (CCPA 1980). Courts have long held that to be "merely

¹ Serial No. 76321755. The application is based on an allegation of a bona fide intention to use the mark in commerce.

descriptive," a term need only describe a single significant quality or property of the goods or services. Gyulay, 3 USPQ2d at 1009; Meehanite Metal Corp. v. International Nickel Co., 262 F.2d 806, 120 USPQ 293, 294 (CCPA 1959). Descriptiveness of a mark is not considered in the abstract, but in relation to the particular goods or services for which registration is sought. In re Abcor Dev. Corp., 588 F.2d 811, 200 USPQ 215, 218 (CCPA 1978).

A mark can be descriptive if it describes the intended users of the goods or services. Shaw-Barton, Inc. v. John Baumgarth Co., 313 F.2d 167, 136 USPQ 116, 117 (7th Cir. 1963), cert. denied, 374 U.S. 831 (1963) ("We hold that the word "Homemakers," when applied to calendars of the type involved in this suit, is a noun descriptive of that class of individuals toward which the design and proposed use of the product is oriented") (footnote omitted); In re Hunter Publishing Co., 204 USPQ 957, 962 (TTAB 1979) ("[I]t has been consistently held that a mark which describes the intended users of a particular product is merely descriptive of such goods"; JOBBER AND WAREHOUSE EXECUTIVE for a trade magazine held descriptive of the class of purchasers); In re Camel Mfg. Co., 222 USPQ 1031, 1032 (TTAB 1984) ("[T]here is no doubt that the group described by the term 'MOUNTAIN CAMPER' is a category of purchaser to

whom applicant specifically directs its camping equipment"; MOUNTAIN CAMPER held descriptive of retail services involving the sale of camping equipment); Hunter Publishing Co. v. Caulfield Publishing, Ltd., 1 USPQ2d 1996, 1998 (TTAB 1986) (SYSTEMS USER is descriptive of the readers of a magazine directed to computer users).

To support her position that applicant's mark is merely descriptive, the examining attorney submitted numerous printouts from the Internet and from the LEXIS/NEXIS database. The evidence shows that the term "corn buyer[s]" is a term applied to people who purchase corn.

Potential **corn buyers** and industry representatives from around the world are attending the conference. As part of the meeting, the Nebraska Corn Board will host a Nebraska corn quality program for nearly 100 international representatives introducing them to our quality and identity-preserved corn handling systems. *Nebraska Corn Board* press release, July 23, 2001.

He began his commodity career as a **corn buyer** in 1959 for a large milling firm in central Illinois.
www.cis-oke.com.

Previous positions held by Mr. Eckhardt include **Corn Buyer**, Commodities Merchandiser, Manager of Commodities and Transportation and Manager [of] Logistics.
www.ciaonline.com.

But if China's export tender turns out to have been a red herring, and if world **corn buyers** flock back to the United States this winter, the export program would see an immediate bounce.
Chicago Tribune, December 11, 2000.

He then worked as a federal grain inspector in New Orleans and later joined Frito-Lay in Texas before moving to the company's Sidney, Ill., facility as a **corn buyer**.

State Journal-Register, March 12, 2000.

Japan's economy has been weak, and Japanese **corn buyers** apparently made some of their purchases earlier in the season than normal.

Journal of Commerce, September 9, 1998.

Added Mr. Celma, "We think it would be best for the Mexican industry and **corn buyers** to have access to the corn quota all year round."

Journal of Commerce, August 10, 1998.

[R]ecalled how Michigan farmers marketed the big 1994 corn crop ... to the New Energy ethanol plant in South Bend, where he had worked as a **corn buyer**.

South Bend Tribune, February 1, 1997.

About five years ago, Wilson, who made his millions as Monfort Feedlots' chief **corn buyer**, decided to begin liquidating his savings by contributing to charities.

Omaha World Herald, July 14, 1996.

The evidence that the examining attorney has provided demonstrates that the term "corn buyer" or "corn buyers" is not a coined or unique term. It is a term commonly used to refer to individuals who buy large quantities of corn for institutions and firms. It appears to be a profession to the extent that individuals are referred to in the excerpts above as corn buyers:

Previous positions held by Mr. Eckhardt include Corn Buyer

He "worked as a federal grain inspector ... moving to the company's ... facility as a corn buyer

Wilson, who made his millions as Monfort Feedlots' chief corn buyer

where he worked as a corn buyer

He began his commodity career as a corn buyer

We also note that risk management techniques are associated with purchasing corn.

A hedge would have to be "very inexpensive" to interest Gold Kist Inc., according to Paul W. Pressley, director, **risk management** and insurance at the Atlanta-based agricultural company. "Obviously, a lot of our business is weather related," Mr. Pressley said. "We sell a lot of fertilizer and seeds," and the company is a big **buyer of corn**, he pointed out. *Business Insurance*, December 1, 1997.

At futures exchanges across the globe another form of **risk management** has developed over the last 15 years. The Exchange Traded Option on a futures contract is a unilateral contract which gives the buyer the right to buy or sell a specific quantity of a commodity at a specific price within a specified period of time, regardless of the market price of that commodity.

...

The mill's **corn buyer** believes the corn market may go down or is bearish but does not want to end up with margins squeezed or even negative.
www.vegrains.org.

Therefore, we find that when the term "Corn Buyer" would be associated with services that provide on-line risk management services in the field of pricing and purchasing decisions for corn, it will immediately inform potential purchasers that these services are directed to individuals who purchase corn.

Inasmuch as it clear that the terms "corn buyer" and "corn buyers" are commonly used to refer to the institutional purchasers of corn, we assume that when applicant argues that its mark is "a complete fabrication of the English language" (Applicant's Brief at 10), it is referring to the fact that applicant spells its term without a space between "corn" and "buyer." The absence of the space is not significant here. First, we cannot see how the absence of the space creates a different meaning or perception of the term. Whether the term appears as CORNBUYER or CORN BUYER, it would be understood by the relevant consumers to have the same meaning, a buyer of corn. The Supreme Court has long ago recognized that slight variations in spelling do not change a descriptive term into a non-descriptive term.

The word, therefore is descriptive, not indicative of the origin or ownership of the goods; and being of that quality, we cannot admit that it loses such quality and becomes arbitrary by being misspelled. *Bad orthography has not yet become so rare or so easily detected as to make a word the arbitrary sign of something else than its conventional meaning...*

Standard Paint Co. v. Trinidad Asphalt Mfg. Co., 220 U.S. 446, 455 (1911) (emphasis added).

Other cases have recognized that a slight misspelling does not change a merely descriptive term into a suggestive term. See Armstrong Paint & Varnish Works v. Nu-Enamel

Corp., 305 U.S. 315 (1938) (NU-ENAMEL; NU found equivalent of "new"); In re Quik-Print Copy Shops, 616 F.2d 523, 205 USPQ 505, 507 n.9 (CCPA 1980) (QUIK-PRINT held descriptive; "There is no legally significant difference here between 'quik' and 'quick'"); Hi-Shear Corp. v. National Automotive Parts Association, 152 USPQ 341, 343 (TTAB 1966) (HI-TORQUE "is the phonetic equivalent of the words 'HIGH TORQUE'"); and In re Organik Technologies Inc., 41 USPQ2d 1690 (TTAB 1997) (ORGANIK).

In the following cases specifically involving a misspelling consisting of the deletion of a space between words, the combined term remained descriptive. See In re Gould Paper Corp., 834 F.2d 1017, 5 USPQ2d 1017 (Fed. Cir. 1987) (SCREENWIPE generic for a wipe for cleaning television and computer screens); In re Abcor Dev., supra, (GASBADGE at least descriptive for gas monitoring badges; three judges concurred in finding that term was the name of the goods); In re Orleans Wines, Ltd., 196 USPQ 516 (TTAB 1977) (BREADSPRED descriptive for jams and jellies that would be a spread for bread); In re Perkin-Elmer Corp., 174 USPQ 57 (TTAB 1972) (LASERGAGE merely descriptive for interferometers utilizing lasers). There is nothing in the facts of this case that would lead us to conclude that the term "cornbuyer" would not, in the same manner, be seen as

the equivalent of "corn buyer." Therefore, the term CORNBUYER would likewise be merely descriptive of applicant's services.

While applicant notes that "[n]o such word as CORNBUYER really exists in the dictionary" (Applicant's Brief at 11), the presence of a term in the dictionary is not a condition precedent for a finding that a term is merely descriptive. In re Gould Paper, supra (SCREENWIPE); In re Abcor Dev., supra (GASBADGE); In re Tower Tech, Inc., 64 USPQ2d 1314 (TTAB 2002) (SMARTTOWER merely descriptive, no dictionary definition of term).

Additionally, applicant argues that the examining attorney has improperly dissected its mark. However, applicant's mark consists of the combined words "corn" and "buyer" without a space in typed form. The examining attorney's evidence shows that the same words with a space are used to describe people who buy corn for an occupation. This evidence shows that the mark as a whole is descriptive, not just the individual parts of applicant's mark.

Applicant also argues that its "services are geared toward risk management and business-related decisions and not towards the 'corn buyers' cited in evidentiary articles. In so doing, the Examining Attorney disregards

the fact that Planalytics's services are not used by 'corn buyers,' or even as a substitute for a human 'corn buyer.'" Applicant's Brief at 8. Applicant goes on to argue that its mark "does not 'merely describe' the market research and risk management services actually provided under the mark. The CORNBUYER mark has no relation to a person or entity that buys corn." Id. However, applicant does acknowledge that "all of the evidence provided by the Examining Attorney supports the proposition that CORNBUYER may be merely descriptive of the purchasing of corn," going on to assert that "it is suggestive of 'risk management services in the field of pricing and purchasing corn.'" Applicant's Brief at 9.

Applicant's identification of services makes it clear that its services are directed to those who are in the field of making purchasing decisions for corn. The evidence supports the conclusion that these people would be referred to as corn buyers. While applicant's mark does not describe every feature or characteristic of its services, there is no requirement that a mark must do this before it can be found to be merely descriptive of the services. Gyulay, 3 USPQ2d at 1009; Meehanite Metal, 120 USPQ at 294. Clearly, applicant's mark describes a feature or characteristic of the services to the extent that it

immediately convey that its services are intended for individuals who purchase corn.

Therefore, we conclude that applicant's mark CORNBUYER is merely descriptive of applicant's services.

We now address the refusal to register on the ground that applicant did not comply with the examining attorney's requirement for information. In the first Office action (page 4), the examining attorney required the applicant to state whether the term CORNBUYER has any significance in the trade or any relation to the services. In addition, she required applicant to submit any product information. "If such materials are not available, the applicant must submit a detailed description of the goods/services, including but not limited to their nature, purpose, prospective purchasers, and channels of trade. This information is necessary to evaluate accurately and fully the registrability of the applicant's proposed designation."

When applicant did not respond to this requirement, the examining attorney made the requirement final, along with her refusal to register the mark on the ground of descriptiveness. In its request for reconsideration (page 13), applicant addressed the requirement for information for the first and only time by simply stating: "Applicant

respectfully submits that it has no informational materials as the application is currently an intent-to-use application." In her denial of the request for reconsideration, the examining attorney reminded applicant that the requirement applied even to intent-to-use applications to the extent that the requirement provided that, if materials were not available, applicant must submit a detailed description of the services. Applicant did not address the issue in its brief and the examining attorney argues that applicant has not complied with her requirement for information.

Trademark Rule 2.61(b), 37 CFR 2.61(b), provides that the "examiner may require the applicant to furnish such information and exhibits as may be reasonably necessary to the proper examination of the application." More specifically, the "examining attorney may request literature, exhibits, and general information concerning circumstances surrounding the mark and, if applicable, its use or intended use." TMEP § 814 (3rd ed. 2003).

As the Board stated in In re SPX Corporation, 63 USPQ2d 1592, 1597 (TTAB 2002).

Trademark Rule 2.61(b) provides that the Examining Attorney may require the applicant to furnish such information and exhibits as may be reasonably necessary to the proper examination of the application. In response to a request for information

such as the Examining Attorney made in this case, an applicant has several options. It may comply with the request by submitting the required advertising or promotional material. Or it may explain that it has no such material, but may submit material of its competitors for similar goods or provide information regarding the goods on which it uses or intends to use the mark. Or it may even dispute the legitimacy of the request, for example, if the goods identified in the application are such ordinary consumer items that a request for information concerning them would be considered unnecessary and burdensome.

Applicant has chosen to ignore the examining attorney's specific request that it provide a "detailed description" of its services. Applicant does not maintain that it is unable to do so or offer any explanation for its failure to comply with this requirement. The fact that applicant has filed its application based on the intent-to-use provision of the Trademark Act does not per se excuse it from complying with the examining attorney's requirement for information. In re DTI Partnership LLP, 67 USPQ2d 1699 (TTAB 2003) (Intent-to-use application refused registration for failing to comply with examining attorney's requirement for information). We find that the examining attorney's requirement for information in this case was reasonably necessary for the examination of the application.²

² While we have affirmed the descriptive refusal without the benefit of this evidence, the lack of this evidence, while a hindrance, did not prevent the review of this case. Compare DTI Partnership, 67 USPQ2d at 1702 ("[O]ur ability to fully and accurately access the substantive merits of the mere descriptiveness issue has been hindered by applicant's failure to

Applicant has, without explanation, refused to comply with the examining attorney's proper requirement for information regarding its intended services. Therefore, we agree that the examining attorney's refusal to register applicant's mark on this ground was proper.

Decision: The refusals to register are affirmed.

submit information and materials;" 2(e)(1) refusal dismissed as moot) with SPX Corporation 63 USPQ2d at 1597 (Refusals based on descriptiveness and failure to comply with examining attorney's requirement for information affirmed).